A.F.R.

5/10/04

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Writ Petition No.2448/2004

Dr. Manoj Kumar Goyal & others

- Versus -

State of Chhattisgarh & 2 others

ORDER FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

JUDGE
1.10.2004

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice
3 .10.2004

POST FOR ORDER ON 5th. OCTOBER, 2004

Sd/-
L.C. Bhadoo
Judge

4th.10.2004

(114)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*: -

HON'BLE MR. A.S.V. MOORTHY, C.J.

AND HON'BLE MR. L.C. BHADOO, J.

Writ Petition No.2448/2004

Dr. Manoj Kumar Goyal & others

- Versus -

State of Chhattisgarh & 2 others

Present: -

Mr. P. Diwakar, Advocate: For the petitioners.

Mr. Prashant Mishra, Additional Advocate General: For the State/respondent.

ORDER

(Passed on 5th October, 2004)

The following order of the Court was passed by *Justice L.C. Bhadoo*: -

The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India seeking the following reliefs (i) that the respondents be directed to publish the waiting list of those candidates including the petitioners who have opted for the same in the counselling held on 9-7-2004 for the year 2004, 2005 and 2006 so that it should be known to all the candidates and that will enable them to take their future course of action, (ii) they be directed to intimate the petitioners about the seats in the waiting list, (iii) they be further directed to fill up the vacant seats whenever any seat falls vacant for one or the other reason, (iv) they be further directed to hold counselling in respect of 13 seats of Assistant Surgeon Quota by converting them into unreserved category, and (v) they be further directed to hold counselling for the year 2005 and 2006 separately in respect of the waiting list candidates.

(2) The petitioners' case is that they appeared in the Pre-P.G. Examination Course held on 22nd May 2004 for the year 2004, 2005 and 2006 conducted by respondent No.2. The result was declared on 26-5-2004 and the petitioners secured ranks as mentioned in para 5.3 of the petition. The counselling was to be conducted on 29th & 30th May 2004, but on account of judicial intervention the same could not be conducted. But, ultimately the counselling was held on 9th July 2004. The petitioners were called in counselling, but during the counselling as they were not getting the subjects of their choice that is why they preferred to remain in the waiting list of 2005-2006 so, as and when any seat falls vacant, then they can get the subject of their own choice, but the respondents are not publishing the waiting list, they are not informing the petitioners about their exact position and even they are not coming forward to tell that the petitioners will be considered against the vacancies which will arise in the year 2005 and 2006.

(3) On the other hand, return has been filed on behalf of respondents wherein it has been mentioned that the last date of counselling was 9th July 2004, on that day all the seats were filled up and by 5 pm waiting list stood lapsed. Moreover, the petitioners had not given in writing for remaining in the waiting list. There is no provision in the Rules regarding the conversion of the Assistant Surgeon Quota in the general category seats. Since the waiting list has lapsed, the petitioners cannot be invited for the counselling for the year 2005 and 2006 and the same will be against the provisions of the Rule 11 of the Rules of Examination 2004.

(4) Rejoinder has been filed on behalf of the petitioners in which it has been mentioned that it is incorrect to say that the petitioners have not opted for the waiting list. Even at the time of counselling the petitioners had filled up a form and they had put their signatures on it indicating in writing for remaining in the waiting list. The counselling committee had also put their signatures on the form confirming this. The same waiting list containing ranks and roll numbers of the candidates was displayed at the time of counselling. Every single candidate who attended the counselling is a witness to this fact

as the waiting list has been seen by all the candidates. In the counselling, the committee prepared the waiting list (Annexure-R/3). It must be deemed that the counselling committee prepared the list under rule 10.16; otherwise there was no purpose for preparing waiting list and obtaining the same. It is submitted that 36 candidates have opted for 2005 and 2006 sessions as shown in the waiting list (Annexure-R/3) filed by respondents and the petitioners are amongst them. Once having accepted this position of the waiting list and the right of the opted candidates, respondents cannot take contrary stand in the petitioners' case.

(5) We have heard learned counsel for the parties.

(6) Based on the pleadings of parties and arguments advanced by their counsel, following questions arise for decision of this Court: -

(i) Whether the petitioners are entitled for admission in case any seat falls vacant in the year 2005 and 2006 as waiting list candidates, as the petitioners have opted for the waiting list under Rule 10.16?

(ii) Whether the petitioners are entitled for admission against any seat falls vacant during 2005 and 2006, as the same will not be contrary to the terms and conditions prescribed in Rule 11?

(iii) Whether the Assistant Surgeon Quota seats, which remained vacant on account of non-availability of the eligible candidates of that category, can be converted into general category seats?

(7) Now, as far as point No. (i) is concerned, in this connection Rule 7 of the Pre-P.G. Examination envisages that 'in the year 2004 the Pre-P.G. Examinations shall be held for admissions for the session beginning in the year 2004, the sessions beginning in the year 2005, and the session beginning in the year 2006'. Therefore, while interpreting these rules, we have to bear in mind that the examination was conducted for the 1st year P.G. course of 2004, 2005 and 2006. Thereafter, Rule 9 comes which deals with the merit list and the waiting list. Rule 9.3 envisages that 'waiting list- it is the list of eligible candidates placed at the lower ranks in the merit list. When all the

seats available at the time of counselling are availed by candidates placed in merit list in their respective categories, remaining candidates in merit list shall be deemed to be in the waiting list. Such candidates shall be considered when any seat falls vacant before the last date of counselling'. Rule 10 is about the counselling (s) and then come to rule 10.16 which envisages that 'a candidate who does not wish to be admitted to any of the session, subject and course available at the time of counselling consistent to his/her merit, may so indicate in writing. Such candidate shall forfeit of his/her right to admission on all seats available at the time of his/her counselling and will not be admitted to any subject'.

(8) Next part of this rule envisages that 'such a candidate will be again considered for admission if any seat falls vacant in any course and subject available at the time of subsequent counselling(s) before the last date of counselling. Waiting list shall be stand lapsed on the last date of counselling at 5 p.m. No application for admission for the seats, which fall vacant after this date, shall be considered under any circumstances'.

(9) Rule 10.17 envisages that 'if any seat remains or falls vacant in any subject the same would be filled up from the waiting list strictly in the order of merit by subsequent counselling(s) in the same manner as mentioned above. The dates of subsequent counselling(s) for the candidates in waiting list will be communicated to them by registered post and also displayed on notice board of the Office of the Director Medical Education. While filling up such vacant seats, candidates already offered admission in any subject will not be considered and candidates in waiting list will only be considered till the last date of counselling'. Rule 10.18 envisages that 'seats surrendered/reverted from All India quota will be divided among the various categories viz. Unreserved Scheduled Caste, Scheduled Tribe and Other backward Classes in same ratio as prescribed for the State seats. Subject wise distribution for these surrendered/reverted All India quota seats among different categories will be done by draw of lots.

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(10) Learned counsel for respondents argued that as the last date of counselling, as per the Court's order, was 9th July 2004. All the admissions were completed on that day, therefore, waiting list stood lapsed at 5 pm on that day, as such the petitioners are not entitled to be considered for the sessions 2005 and 2006. But, we are of the considered opinion that this interpretation of learned counsel for respondents is dehors the scheme of the rules for the reason as mentioned above that the examination was conducted for three sessions i.e. 2004, 2005 and 2006. If the argument advanced by learned counsel for respondents is accepted, then that will be contra to the purpose and object of these rules. If any All India quota seat or other seat falls vacant for the session 2005 and 2006, then respondents will not be entitled to fill up those seats if there is no waiting list and those seats will go in waste. This can never be the intention of the rule making authority. Time and again, the State Government is raising argument that this State being a backward State, around about more than 60% area of the State is inhabited by tribal, schedule caste and O.B.C. and 40% area is covered by forest, on account of paucity of the doctors the State Government is not able to post doctors in that area, whereas, under Article 47 of the Constitution of India it is the duty of the Government to take care of improving the health of its citizens. Therefore, in this light it cannot be said that the rule making authority, while framing the rule, was of the view that even if any seat falls vacant for the session 2005 and 2006, then that will not be filled up and will remain vacant. If the interpretation of the learned Additional Advocate General is allowed, then even though the infrastructure facilities are available for 83 students, the vacant seats cannot be filled up with the result the public interest will suffer apart from the State incurring financial loss.

(11) It is true that as far as session 2004 is concerned, the admissions were closed on 9th July 2004 and for the purpose of this year no other admissions can be considered in view of the Medical Council of India's guidelines issued following **Madhu Singh**'s judgment of the Hon'ble Apex

Court. If we read Rules 7, 9.3, 10.16 and 10.17 together, the intention of the rule making authority was that the respondents are required to maintain waiting list for the sessions 2005 and 2006 also, so that as and when all India quota seat reverts back or for any reason those candidates who have been admitted for sessions 2005 and 2006 do not turn up, then, those seats should be filled up from such waiting list. Therefore, the above rules must be reasonably construed and understood or read down in such a manner which carries out the real purpose and meaning in consonance with the ground realities and in the light that the examination was conducted for 3 sessions i.e. 2004, 2005 and 2006. **The settled rule of interpretation is that the statute and rule must be interpreted in a manner, which carries out the meaning, object and purpose of the rule.** It is evident from the fact that only this year 14 seats reverted back from all India quota, as no candidates were available. Similarly, 13 seats against Assistant Surgeon quota also remained vacant for all the 3 years on account of non-availability of the eligible candidates. Therefore, respondents are required to maintain the waiting list for the session 2005 and 2006. If before commencement of the session any seat falls vacant on account of reverting back from all India quota or for any other reason, then respondents should conduct the counselling strictly in accordance with merit of the waiting list and fill up those vacant seats.

(12) The petitioners' case is that when during the counselling for the session 2004 they could not get the subject of their choice, then they took a calculated risk by remaining in the waiting list for the sessions 2005 and 2006, so that as and when any seat falls vacant of all India quota or for any other reason they will go for the subject of their choice and that is why they preferred to remain in the waiting list. In the rejoinder, the petitioners have specifically mentioned that at the time of counselling the petitioners had filled up a form and had put their signatures on it indicating in writing (Opted for Waiting List). The counselling committee had also put their signatures on the form confirming this. The same waiting list containing ranks and the roll

numbers of candidates was displayed at the time of counselling. Every single candidate who attended the counselling is a witness to this fact as the waiting list has been seen by all the candidates. This fact has not been denied by respondents by filing a reply. Learned counsel for respondents simply argued that as per rule 10.16 the petitioners were required to give in writing to remain in the waiting list. As they had not given in writing, therefore, they are not entitled for the same. We do not find any force in this argument of learned counsel for respondents for the reason that as per the rejoinder the petitioners had specifically stated that they had filled up a form, opted for the waiting list and that was signed by them and also by the committee. Second reason is that learned counsel for respondents has not argued that other candidates gave in writing for remaining in the waiting list and the petitioners had not given in writing. The petitioners are still in the waiting list. Therefore, we are of the considered opinion that the petitioners have the right to be considered as the candidates of waiting list.

(13) Learned Additional Advocate General argued that if the petitioners are kept in the waiting list, even then, as per Rule 11 they will not be entitled for the admission for sessions 2005 and 2006. Rule 11.1.1.6 envisages that if the candidate chooses a subject and course in the session starting in the year 2005 and has completed one-year rural service, then before session 2005 starts he has to complete one-year rural service. Rule 11.1.1.7 envisages that if the candidate has not completed rural service of even one year, then before session 2005 starts, he will have to complete one-year rural service and the remaining one-year service he will complete after the completion of the course. For that purpose he has to furnish a bond of Rs.75,000/-. As per Rule 11.1.1.8 if the candidate chooses a subject and course in the session starting in the year 2006 and he has not completed two years rural service, then before the session 2006 starts the candidate has to complete two years of rural service and if he has completed one year, then he has to complete one year rural service before the session starts. Learned Additional Advocate General argued that since the petitioners are not

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admitted and in case they have not completed rural service as per the above provisions, then they will not be entitled for the admission. But, we do not find any merit in this argument for the reason that the petitioners are waiting list candidates. These provisions can be made applicable to them only when they are admitted. Rule 11 comes into play only when the candidate has been admitted and for this purpose if the petitioners are admitted to any of the course of 2005 and 2006, then from that day Rule 11 can be made applicable to them and they will undertake to complete two years rural service as per Rule 11. If any candidate has not completed even one-year service and he is admitted to session 2005 or 2006, then he will furnish a bond as per the rules and he will complete rural service after the completion of the P.G. course. Therefore, this rule will not come in the way of the petitioners in maintaining waiting list for the admission for session 2005 and 2006.

(14) It is admitted position that no provision has been made in these rules to overcome the difficulty. If the Assistant Surgeons are not available to fill their quota seats, then what will happen to the vacant seats of Assistant Surgeon quota. It is also admitted position that during three years, i.e. 2004, 2005 and 2006 around about 13 seats of Assistant Surgeon quota are vacant on account of non-availability of the eligible candidates and to fill up these vacant seats no provision has been made in the rules. Learned counsel for the petitioners argued that in Rajasthan, West Bengal and Utter Pradesh rules a provision has been made for reverting these Assistant Surgeon quota seats to the general quota if any seat of Assistant Surgeon quota remained vacant. He further argued that even in Madhya Pradesh also vacant seats of Assistant Surgeon quota are reverting back to the general category. As mentioned above that this is a backward State and infrastructure has been created in the medical colleges for 83 seats, for rural area doctors are also not available, as per Article 47 of the Constitution of India the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties, when infrastructure is available and in order to ensure that the

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infrastructure should not go in waste and public interest should not suffer; respondents are under constitutional obligation to fill up all the seats available. Therefore, respondents should fill up all the vacant seats even the Assistant Surgeon quota seats by converting them into general quota seats.

(15) As far as the question of 4 vacant seats of Assistant Surgeon quota of 2004 is concerned, looking to the facts and circumstances, now that cannot be permitted as per **Madhu Singh's** case for the reason that the session has already commenced in the month of July 2004 and, now, we are in the month of October, 2004, therefore, in the mid session admissions cannot be permitted as per the M.C.I.'s guidelines. But, however, respondents are directed that they should fill up Assistant Surgeon quota vacant seats of 2005 and 2006 by converting them into general category seats. The prayer of the petitioners that the waiting list should be published is just, reasonable and fair. The respondents should maintain transparency in the matter of admissions to the ~P.G. courses and in order to achieve that objective respondents are directed to publish the waiting list strictly in accordance with merit of the respective candidates and it should be published on the notice Board within a period of 7 days from today.

(16) In the result, the petition of the petitioners is allowed. The respondents are directed to publish the waiting list within a period of 7 days strictly in the order of merit and consider them for admission against the vacant seats available at the time of commencement of the session 2005-2006. An individual communication be also sent by post to first 100 waiting list candidates so that all the waiting list candidates should know about their position and decide their future course of action.

(17) Parties are directed to bear their own costs.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

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